UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

YANKEE EXPORTS, INC.,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 99-29-P-H***
	)	
ALTON RAY, et al.,	***)***	
	)	
Defendants	***)***	
----------		***(Consolidated)***
ALFRED G. MOSCA,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 99-35-P-H***
	)	
ALTON RAY, et al.,	***)***	
	)	
Defendants	***)***	

MEMORANDUM DECISION ON MOTIONS TO STRIKE AND TO AMEND AND RECOMMENDED DECISION ON DEFENDANTS' MOTIONS TO DISMISS

The defendants in these consolidated cases,[1] Alton Ray, Michael Nelson,[2] Michael Weston, Michael Forrest & Partners ("Forrest") and Ashbourne Marketing, Limited ("Ashbourne"),[3] seek

[1] All references to document docket numbers, unless otherwise noted, are to docket numbers in Docket No. 99-29-P-H.

[2] Nelson is named as a defendant only in Docket No. 99-29-P-H. All of the other defendants are named in the complaints in both actions.

[3] Waterside, Limited, initially named as a defendant in Docket No. 99-29-P-H, has been dismissed. Notice of Dismissal (Docket No. 9).

dismissal of the actions based on the existence of a pending lawsuit involving Ashbourne and the plaintiffs in this action, Alfred G. Mosca and Yankee Exports, Inc. ("YEI"), in the courts of the Isle of Jersey. Defendant Nelson also seeks dismissal or summary judgment based on allegedly ineffective service. The defendants move to strike as untimely a response filed by Mosca to their motion to dismiss. YEI moves to strike certain affidavits and the reply memorandum filed by the defendants in support of their motion to dismiss; it has also submitted two motions for leave to amend its complaint. Mosca moves for leave to amend his complaint.

I deny YEI's motions to strike, its second motion for leave to amend and the defendants' motion to strike Mosca's response. I grant YEI's first motion for leave to amend and Mosca's identical motion, even though that motion was not timely filed. I recommend that the court deny the motions to dismiss.

I. Factual and Procedural Background

Ashbourne, a Jersey corporation, brought suit in 1998 in the Island of Jersey against Mosca and YEI. Affidavit of Ashley David Hoy ("First Hoy Aff."), Exhibit C to Defendants' Motion to Dismiss in Deference to Jersey Proceedings and Incorporated Memorandum of Law ("Defendants' Motion to Dismiss") (Docket No. 6), ¶ 7. In that action, Ashbourne was granted leave to employ substituted service on Mosca and YEI by an order dated October 30, 1998. *Id*. ¶10. After additional proceedings, personal service was made on Mosca and YEI on January 25, 1999. *Id*. ¶¶ 16-18, 23-24. The Jersey action alleges that Mosca violated a consultancy agreement between him and Ashbourne and that YEI is a constructive trustee for funds owed to Ashbourne. Order of Justice, copy attached to First Hoy Aff. as Exhibit ADH3.

YEI is a Maine corporation with its principal place of business in Bangor, Maine. Verified Complaint, attached to Notice of Removal (Docket No. 1), ¶ 1. Mosca, a resident of Bangor, and Ray, a former resident of Maine now residing in Connecticut, each own 50% of the outstanding stock of YEI. *Id*. ¶¶ 2, 8-9; Verified Complaint for Shareholder Derivative Action, *Alton W. Ray v. Alfred G. Mosca and Frank Walker*, Maine Superior Court (Penobscot County), copy attached to Affidavit of James C. Hunt (Exh. B to Defendants' Motion to Dismiss), ¶ 3. YEI filed its verified complaint against Ray, Nelson, Weston, Forrest and Ashbourne in the Maine Superior Court (Cumberland County) on or after December 10, 1998. Verified Complaint at 17; Notice of Removal ¶¶ 2-3. Ray removed the action to this court on February 8, 1999. Notice of Removal at 3. The verified complaint, in thirteen counts, alleges violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68; fraud; usurpation of corporate opportunities; breach of fiduciary duty; negligence; negligent misrepresentation; interference with economic relations and expectancies; conversion; defamation; and unjust enrichment. Verified Complaint at 5-17.

On or after December 23, 1998 Mosca filed a complaint against Ray, Weston, Forrest and Ashbourne in the Maine Superior Court (Cumberland County). Complaint, attached to Notice of Removal (Docket No. 1 in Docket No. 99-35-P-H), at 11; Notice of Removal ¶¶ 2-3. Ray removed the action to this court on February 11, 1999. Notice of Removal at 3. The complaint, in five counts, alleges violation of RICO; breach of fiduciary duty; tortious interference with prospective economic relationships; defamation; breach of the Ashbourne consulting agreement; and misappropriation and conversion of corporate opportunities. Complaint at 8-11. The plaintiffs and the defendants moved to consolidate the two actions, Plaintiff's Motion for Consolidation (Docket

No. 5 in Docket No. 99-35-P-H); Plaintiff's Motion for Consolidation (Docket No. 2); Defendants' Motion for Consolidation with Incorporated Memorandum of Law for Purposes of the Defendants' Motion to Dismiss in Deference to Jersey Proceedings (Docket No. 5), and the plaintiffs' motions were granted on March 17, 1999, Endorsement, Plaintiff's Motion for Consolidation (Docket No. 5 in Docket No. 99-35-P-H); Endorsement, Plaintiff's Motion for Consolidation (Docket No. 2).

Weston is a resident of the Island of Jersey. Verified Complaint ¶ 4; Answer of Defendants Alton Ray, Michael Nelson, Michael Weston, Michael Forrest & Partners, & Ashbourne Marketing Ltd., copy attached to Notice of Removal, ¶ 4. He is a director of Ashbourne and an employee of Langtry Financial Services Limited, a Jersey corporation. Affidavit of Michael Weston ("First Weston Aff."), Exh. A to Defendants' Motion to Dismiss, ¶ 2. Michael Forrest & Partners is a trade name used by Langtry Financial Services Limited, when it entered into a management services contract with Ashbourne 1n 1993. *Id*. ¶¶ 2, 7 & Exh. 4 thereto. Nelson is an attorney with an office in California, Affidavit of Michael B. Nelson (Exh. 1 to Statement of Material Facts Submitted by Defendant Michael B. Nelson (Docket No. 27)), ¶ 1, who is alleged, *inter alia*, to have arranged the creation of Ashbourne, Verified Complaint ¶¶ 16-17.

II. Defendants' Motion to Dismiss (Docket No. 6)

The defendants' primary argument in support of their motion to dismiss[4] — the pendency of

[4] The defendants have moved to strike Mosca's response to their motion to dismiss as untimely, because it was filed one day late under this court's Local Rule 7. Defendants' Motion to Strike Plaintiff Mosca's Untimely Memorandum of Law in Opposition to Defendants' Motion to Stay, and for Entry of Final Judgment (Docket No. 17). Mosca responds that "[i]t would have made more work for the court" if he had filed a request for a one or two day extension of the response period or filed the response in Bangor and "requested the Court staff to ship those papers to (continued...)

the Jersey proceeding — has been overtaken by events. The Royal Court of the Island of Jersey has stayed that proceeding pending completion of this action. [Order] in the Royal Court of the Island of Jersey (Samedi Division), 22nd April 1999, Between Ashbourne Marketing Limited, Plaintiff, and Alfred G. Mosca, First Defendant, and Yankee Exports, Inc., Second Defendant, copy attached to letter from Leonard W. Langer, Esq. to William S. Brownell, clerk of this court, dated April 22, 1999, at 10 (Docket No. 74). Accordingly, there is nothing proceeding in Jersey to which this court could defer.

The defendants contend, in the alternative, that these consolidated actions should be dismissed based on forum selection clauses and choice-of-law clauses in consulting agreements between Ashbourne and Mosca and Ashbourne and Ray, a management contract between Ashbourne and Forrest, and a letter of intent between Ashbourne and Yankee Exports, Ltd. ("YEL"), an Irish company the ownership of which is in dispute. The defendants do not explain how the terms of contracts among themselves (the consulting agreement between Ashbourne and Ray and the management contract between Ashbourne and Forrest) or between one of them and an entity not a party to these cases (the letter of intent) could control claims brought against them by Mosca and YEI, who were not parties to those contracts. Similarly, they do not suggest how the terms of an

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[4](...continued)
Portland," and that counsel in Bangor would never attempt to take procedural advantage in this manner. Plaintiff Mosca's Memorandum of Law in Opposition to Motion to Strike (Docket No. 19) at [2]. This response is wholly inadequate. It most decidedly would not have made more work for the court had counsel for Mosca undertaken the appropriate request for an extension; the court is even now enduring the extra work occasioned by counsel's failure to do so. The practice among the bar in Bangor is irrelevant to this court's rules, with which this court expects counsel practicing before it to comply. That being said, after careful consideration of the factors set forth in *United States v. Roberts*, 978 F.2d 17, 21-23 (1st Cir. 1992), I conclude that the late-filed memorandum should be considered. The motion to strike is denied.

agreement between Mosca and Ashbourne could be applied to control Mosca's claims against the other defendants, who were not parties to that agreement.

The consulting agreement between Mosca and Ashbourne is the only one of the documents cited by the defendants that is at issue in either of the cases before this court. The term of that agreement upon which the defendants rely provides, in full: "This agreement shall be construed in accordance with law, and the parties hereto submit to the jurisdiction of the Royal Court of Jersey." Consulting Agreement, Exh. 1 to First Weston Aff., ¶ 13. Contrary to the defendants' position, this language does not constitute a "forum-selection clause," as that term is used in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), the case upon which they rely. The contract language at issue in *Zapata* provided: "Any dispute arising must be treated before the London Court of Justice." *Id*. at 2. The language at issue here, unlike that in *Zapata*, does not require the parties to bring their dispute before the Jersey court; it merely prevents them from objecting to the jurisdiction of that court. This language cannot be construed to compel, or even to justify, dismissal of Mosca's claims arising from the consulting agreement. *Guy F. Atkinson Constr. v. Ohio Mun. Elec. Generation Agency Jt. Venture 5*, 943 F. Supp. 626, 627-28 (S.D.W.Va. 1996) (clause providing that parties "jointly and severally submit to the personal jurisdiction" of certain courts merely a consent-to-jurisdiction clause, not mandatory-forum selection clause, citing cases). *See also Blanco v. Banco Indus. de Venezuela, S.A.*, 997 F.2d 974, 979 (2d Cir. 1993).

Accordingly, the defendants' motion to dismiss should be denied.[5]

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[5] In their reply memorandum, the defendants raise an additional argument, contending that Mosca and YEI are judicially estopped to claim that Maine is the appropriate forum for the claims set forth in their complaints by a statement made by Mosca in a separate state-court action, *Ray v. Mosca*. Defendants' Reply Memorandum in Support of Defendants' Motion to Dismiss in Deference (continued...)

III. Motions to Amend Re Forrest (Docket Nos. 24 and 45)

The plaintiffs have moved to amend their respective complaints by changing the references to Michael Forrest & Partners to Langtry Financial Services Limited ("Langtry"), in accordance with the representations of defendant Weston that Michael Forrest & Partners was the trade name of Langtry at the time of the relevant events, First Weston Aff. ¶7, and that Michael Forrest & Partners has not been a legal entity separate from Langtry since 1988, Affidavit of Michael Weston ("Second Weston Aff."), attached to Statement of Material Facts Submitted by Defendants Michael Weston and Michael Forrest & Partners (Docket No. 31), ¶ 6. YEI filed its motion for leave to make this change on April 27, 1999. Mosca filed his motion on May 17, 1999. The deadline for amendment of the pleadings established by the scheduling order in this case was April 30, 1999. Report of Scheduling Conference and Order (Docket No. 20) at 2.

Forrest opposes YEI's motion on the ground that the proposed amendment would be futile. Specifically, it argues that Langtry is not amenable to service of process under Maine's long-arm statute and that the plaintiffs cannot serve Langtry with process outside the United States for Count I of the complaints, which allege RICO violations. Objection of Defendant Michael Forrest & Partners to Yankee Export, Inc.'s Motion to Amend Complaint (Docket No. 36) at 1. These

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[5](...continued)
to Jersey Proceedings (Docket No. 18) at 6-8. The stay entered by the Royal Court of the Island of Jersey makes this argument moot, but if it were not moot, I nevertheless could not consider it. Issues raised for the first time in reply memoranda will not be considered by this court. *In re One Bancorp Sec. Litig.*, 134 F.R.D. 4, 10 n.5 (D. Me. 1991). YEI has filed a motion to strike the defendants' reply memorandum and its accompanying affidavits. Plaintiff Yankee Exports, Inc.'s Motion to Strike Reply Memorandum and Affidavits (Docket No. 23). There is no need to strike any of these documents. I have not relied on any of them, their content has been largely rendered moot by the stay issued by the Jersey court, and, as noted, this court will not address new issues raised for the first time in reply memoranda. The motion to strike is denied.

assertions are the subject of a separate pending motion. Motion of Defendants Michael Weston and Michael Forrest & Partners to Dismiss or in the Alternative for Summary Judgment, etc. (Docket No. 30). Discovery is underway with respect to this motion, with a deadline for response by the plaintiffs of July 30, 1999. I see no reason to delay the resolution of this motion until that motion is ready for the court's consideration. If the court ultimately concludes that the entity known as either Forrest or Langtry may not be brought before this court, its presence in the complaints by whichever name will make no difference. YEI's motion to amend is granted.

Mosca's motion to amend consists of a single page and by its terms seeks only to amend the caption of his complaint to change "Michael Forrest & Partners" to "Langtry Financial Services, Ltd." Plaintiff Mosca's Motion to Amend Caption (Docket No. 45). The motion refers to an "accompanying Memorandum of Law," *id.*, which is apparently Plaintiff Alfred G. Mosca's Memorandum of Law in Opposition to Motion of Defendants Weston, Michael Forrest and Partners and Ashbourne Marketing Limited to Dismiss or for Summary Judgment (Docket No. 44), filed the same day. This memorandum does not address the fact that the motion to amend was filed seventeen days after the deadline for such motions, but argues that amendment of the caption is appropriate because Forrest attempted to conceal its true status until the period allowed by the scheduling order for amendments had expired. *Id*. at 1-2. As an explanation for Mosca's failure to comply with the scheduling order, this statement is rendered suspect by the fact that YEI was able to discern the need for such an amendment before the period expired. Forrest's objection to Mosca's motion to amend argues that he cannot establish excusable neglect for the failure to file the motion in a timely manner. Objection of Defendants Weston and Michael Forrest & Partners to Plaintiff Mosca's Motion to Amend Caption, etc. (Docket No. 48) at 3-4.

It is not entirely clear what Mosca will accomplish by amending only the caption of his complaint. The name "Michael Forrest & Partners" appears twice in the body of the complaint. Complaint (Docket No. 99-35-P-H) ¶¶ 2, 35. However, on the generous assumption that Mosca meant by his motion to do the same thing that YEI intended by its motion to amend with respect to Forrest, I have resorted again to consideration of the factors set forth in *Roberts*, 978 F.2d at 21-22. While Mosca's explanation for his tardiness is unconvincing, and the seventeen-day delay significant, I see no prejudice to Langtry under the circumstances, and the practical effect of granting the motion would be to keep the consolidated cases in parallel form as much as possible. On balance, I conclude that Mosca's motion should be granted.[6]

IV. Nelson's Motion to Dismiss (Docket No. 28)

Nelson, a defendant only in the YEI action, moves to dismiss under Fed. R. Civ. P. 12(b)(5) on the ground that he has not been served with process. Motion of Defendant Michael B. Nelson to Dismiss or in the Alternative for Summary Judgment for Insufficiency of Service of Process with Incorporated Memorandum of Law[7] ("Process Motion") (Docket No. 28) at 1. He first argues that,

[6] Counsel for Mosca is forewarned that his further disregard of this court's orders and local rules will be at his peril.

[7] Nelson asserts that his motion may be treated as a motion for summary judgment by application of Fed. R. Civ. P. 12(c) because the parties have submitted materials outside the pleadings, Process Motion at 1 n.1, and provides the statement of material facts not in dispute required by this court's Local Rule 56 for motions for summary judgment, Docket No. 27. Rule 12(c) applies to motions for judgment on the pleadings, none of which is before the court in this action. Nelson perhaps means to refer to the final sentence of Rule 12(b), which makes such a provision for motions to dismiss brought pursuant to Rule 12(b)(6). However, this motion is brought pursuant to Rule 12(b)(5), and improper service of process may not be raised by means of a summary judgment motion. 5A C. Wright & A. Miller, *Federal Practice and Procedure* ("Wright & Miller") (continued...)

because the action was initially filed in state court and his answer asserting this defense was filed before the action was removed to federal court, Maine rules for service of process should apply. He then contends that, if the federal rules governing service of process apply, service was nonetheless not appropriately made upon him. YEI does not address the first argument in its response; it argues only that it has effected service in compliance with the federal rules and, in the alternative, that dismissal is not appropriate under the circumstances. Objection to Motion of Defendant Michael B. Nelson to Dismiss or, in the Alternative, for Summary Judgment, etc. (Docket No. 39) at 2-10. Nelson, in turn, does not respond to YEI's alternative argument in his reply. Reply Memorandum of Defendant Michael Nelson in Support of Motion to Dismiss, etc. (Docket No. 50).

This situation is governed by 28 U.S.C. § 1448, which provides:

> In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.
>
> This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case.

This statute has been interpreted to require the federal court to look to state law to ascertain whether service was properly made prior to removal. *Freight Terminals, Inc. v. Ryder Sys., Inc.*, 461 F.2d 1046, 1052 (5th Cir. 1972). "The issue of the sufficiency of service of process prior to removal is strictly a state law issue." *Lee v. City of Beaumont*, 12 F.3d 933, 936-37 (9th Cir. 1993); *accord, Allen v. Ferguson*, 791 F.2d 611, 616 n.8 (7th Cir. 1986).

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[7](...continued)
§ 1353 at 281 (2d ed. 1990).

Here, the service upon which YEI relies was made on January 6, 1999. Affidavit of Todd Handler (Docket No. 41) ¶ 7. The YEI action was removed to this court by Ray on February 8, 1999. Accordingly, Maine law governs the question of the sufficiency of that service. Maine law on service of process is established by court rule. 14 M.R.S.A. §701. The rule governing service of process in civil actions is M.R.Civ.P. 4. For personal service of process outside the state of Maine, the rule provides as follows:

> A person who is subject to the jurisdiction of the courts of the state may be served with the summons and complaint outside the state, in the same manner as if such service were made within the state, by any person authorized to serve civil process by the laws of the place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the state.

M.R.Civ.P. 4(e). Personal service within the state upon an individual must be made as follows:

> Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by publication pursuant to subdivision (g) of this rule, if the court deems publication to be more effective.

M.R.Civ.P. 4(d)(1). The affidavit of the California process server demonstrates quite clearly that he did not make service upon Nelson at his dwelling house or usual place of abode. Handler Aff. ¶¶ 3-7. There is no evidence in the record that Nelson had appointed any person his agent for service

of process or that any other method of service was attempted.

The fact that service on Nelson was defective does not mean that he is necessarily entitled to dismissal of the action against him, however. Section 1448 demonstrates a clear preference for completion of service under state law or service of new process under the federal rules in such circumstances. "[A] defendant can obtain a dismissal for lack of jurisdiction after removal only when the original service in the state court was improper, and plaintiff finds it impossible to perfect service under Rule 4 after removal." 4A Wright & Miller § 1082 at 7. *See also Schmidt v. Wilbur*, 775 F. Supp. 216, 227 (E.D.Mich. 1991) (dismissal not justified if service insufficient under state law because defendant may be re-served as provided by § 1448). Here, Nelson has obviously received actual notice of the action in time to preserve his rights and he does not claim to have been prejudiced by the method of service of process that was used. *Howse v. Zimmer Manuf., Inc.*, 109 F.R.D. 628, 631 (D. Mass. 1986). There is no suggestion that YEI will be unable to serve Nelson properly. Accordingly, the motion to dismiss should be denied, *id*. at 630-31 (motion to dismiss denied and plaintiff allowed to re-serve defendant after remand from First Circuit), and YEI allowed a set period of time in which to serve Nelson under Fed. R. Civ. P. 4.

V. YEI's Motion to Amend (Docket No. 38)

By a motion filed on May 14, 1999 YEI seeks leave to amend its complaint "to add a claim for aiding and abetting breach of fiduciary duty." Motion for Leave to Amend Complaint, with Incorporated Memorandum of Law ("Second Motion to Amend") (Docket No. 38) at 1. The defendants object to the motion because it was filed after the April 30, 1999 deadline established in the scheduling order in these cases for amendment of the pleadings. While this motion was filed a

similar number of days after the expiration of that period as was Mosca's motion to amend, the substance of the motions involved is quite different, requiring a different outcome. Mosca's motion sought only to change the name of a party in precisely the same manner sought by YEI by a timely motion. Here, YEI seeks to add a new substantive claim against the defendants other than Ray. [Proposed] Amended Complaint, attached to Second Motion to Amend, at 2.

YEI explains the delay in filing this motion by contending that, until the Jersey defendants on April 30, 1999 filed their motion to dismiss the RICO claim as to them (Docket No. 30), it had no reason to "explore or enunciate possible similar causes of action under state law." Second Motion to Amend at 2. It contends that, because the proposed additional claim "does not entail any new factual allegations," it will have no impact on discovery and therefore should be allowed. *Id*. at 3. Pleading in the alternative is the common practice in this court, and one with which counsel for YEI is undoubtedly familiar. Even if YEI's highly doubtful assertion that the proposed common-law claim is similar to a RICO claim is accepted, there is no reason why that claim could not have been asserted in a timely fashion. The fact that the idea only recently occurred to YEI's counsel, however the idea may have been stimulated,[8] does not excuse the late filing. In addition, the assertion that the proposed new claim will not increase discovery appears on its face to be incorrect. The proposed amendment merely alleges that the defendants "knowingly gave substantial assistance of encouragement" to others in their alleged breaches of fiduciary duty to YEI. [Proposed] Amended

[8] YEI's suggestion that it should not be held to the time limits set by the scheduling order because it would have come up with the proposed new claim "if the Jersey Defendants . . . had filed their motion earlier," Second Motion to Dismiss at 4, comes perilously close to frivolity. A party is not entitled to disregard court-imposed deadlines merely because its opponent filed a timely motion, albeit near the end of the available time for doing so. *See Andrews v. Bechtel Power Corp*., 780 F.2d 124, 139 (1st Cir. 1985) (late motion to dismiss does not justify delay in moving to amend).

Complaint ¶¶ 88-90. The defendants would be entitled to discovery concerning the nature of that assistance and encouragement.

Accordingly, I deny YEI's motion for leave to amend its complaint to add a claim for aiding and abetting breaches of fiduciary duty. *See Roberts*, 978 F.2d at 21-22 (consideration of reasons underlying tardiness, character of the omission, effect of granting motion on administration of justice).

VI. Conclusion

The defendants' motion to strike (Docket No. 17), YEI's motion to strike (Docket No. 23), and YEI's second motion for leave to amend (Docket No. 38) are **DENIED**. YEI's first motion for leave to amend (Docket No. 24) and Mosca's motion to amend (Docket No. 45) are **GRANTED**. For the reasons stated above, I recommend that the defendants' motion to dismiss (Docket No. 6) and Nelson's motion to dismiss (Docket No. 28) be **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 12th day of June, 1999.

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David M. Cohen
United States Magistrate Judge